

E-filed 4/27/06

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

In re PayPal Litigation

Case No. CV-02-01227-JF (PVT)

**[PROPOSED]
ORDER APPROVING PROPOSED LONG-
FORM PLAN OF ALLOCATION AND
DIRECTING DISTRIBUTION OF THE
LONG-FORM FUND FROM THE NET
SETTLEMENT FUND**

On February 21, 2006, the District Court (Hon. Jeremy Fogel), issued an Order directing the parties to send the Long Form Notice to all Long Form claimants by electronic mail no later than February 28, 2006 and setting a hearing on March 24, 2006 at 9 a.m., to consider any comments from Long Form claimants received on or before March 17, 2006. The record shows that the Long Form Notice was sent in substantially the same form and method approved and ordered by the Court. On or before March 17, 2006, the Court received four (4) comments from Long Form claimants (Schubert, Schechter, Wolf and Gallegos).

Class Counsel had submitted a proposed Long-Form Plan of Allocation for allocating the Long-Form Fund created by the class action Settlement for distribution to Long-Form Claimants for the District Court's review and approval. Supporting documents submitted by Class Counsel included the Settlement Agreement; Plan of Allocation for Net Settlement Fund; Order Approving

1 Distribution of the Statutory Damage Fund and the Short-Form Fund from the Settlement Fund;
2 Long-Form Claim Form; Initial Class Notice; Order Conditionally Approving Class Action
3 Settlement; Notice to PayPal Class Action Long-Form Claimants of the Proposed Plan of Allocation
4 of the Long-Form Settlement Fund; transcript of the September 24, 2004 hearing on final approval
5 of the settlement, and Special Master's Order Recommending Proposed Long-Form Plan Of
6 Allocation. On March 22, 2006 Class Counsel also submitted their Memorandum In Support Of
7 Long Form Plan Of Allocation And In Response To Objections To The Plan Of Allocation, which
8 responded specifically to the Schubert and Schecter objections. The Court has received, reviewed
9 and considered all of the documents and supporting materials provided to it by Class Counsel.

10 On March 24, 2006, the District Court conducted a hearing on the matter. Class Counsel
11 A. J. De Bartolomeo of Girard Gibbs & De Bartolomeo LLP and Robert Finkel of Wolf Popper LLP
12 appeared by telephone, as did defense counsel Molly Lane of Morgan Lewis also appeared by
13 telephone. None of the objectors appeared by telephone or in person. At the March 24, 2006
14 hearing, it was discovered that the Court had received two objections (Wolf and Gallegos) that had
15 not been served on Class Counsel or defense counsel. The Court continued the hearing until March
16 31, 2006 to permit the parties an opportunity to respond to the Wolf and Gallegos objections, and to
17 allow the Court an opportunity to review the arguments in response to the Wolf and Gallegos
18 objections.

19 On March 29, 2006, Class Counsel filed and served Plaintiffs' Amended Memorandum In
20 Further Support Of Long Form Plan Of Allocation And In Response To Objections To The Plan Of
21 Allocation. The March 29, 2006 memorandum supersedes Plaintiffs' March 22, 2006 memorandum,
22 and responded to the four objections filed by Schubert, Schecter, Wolf, and Gallegos. The Court
23 also received a response from Schubert to Plaintiffs' March 22, 2006 Memorandum In Support Of
24 The Long Form Plan Of Allocation.

25 On March 31, 2006, the District Court reconvened the hearing on the proposed Long Form
26 Plan of Allocation. As with the March 24, 2006 hearing, Class Counsel and defense counsel
27 appeared by telephone. None of the objectors appeared. At the March 31, 2006 hearing, Class
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1 Counsel advised the Court that they had spoken with Schubert and were undertaking with PayPal a
2 review of the facts underlying Schubert's claim.

3 After considering the proposed Long-Form Plan of Allocation, the arguments raised in the
4 four objections to the proposed Long Form Plan of Allocation, Class Counsel's written memoranda
5 and submissions in support of the proposed Long Form Plan of Allocation, and oral presentations at
6 the hearing, the District Court makes the following findings.

7 1. The objections submitted by Schubert, Schecter, Wolf, and Gallegos are overruled.

8 2. In accordance with the terms of the Settlement Agreement and Plan of Allocation for
9 Net Settlement Fund, the proposed Long-Form Plan of Allocation considers the amount of damages
10 claimed by each claimant, the nature of the injury complained of, the quality of proof submitted in
11 support of the claim, the recoverable damages, the relative probability of success on the merits, and
12 any other factors considered relevant to the claims administration process by the independent Claims
13 Administrator and/or Class Counsel.

14 3. The proposed Long-Form Plan of Allocation includes appropriate measures to guard
15 against fraudulent claims or claims submitted by Class Members who may have misused the PayPal
16 system. These safeguards were designed after consultation with PayPal representatives familiar with
17 PayPal's policies, procedures, and systems.

18 4. PayPal has no objection to the proposed Long-Form Plan of Allocation.

19 5. The Long-Form Plan of Allocation appears to be fair, reasonable, and adequate as
20 required by applicable authority. See Class Plaintiffs v. Seattle, 955 F.2d 1268, 1284-1285 (9th Cir.
21 1992).

22 6. The proposed Notice to PayPal Class Action Long-Form Claimants of the Proposed
23 Plan of Allocation of the Long-Form Settlement Fund, and the method of dissemination of that
24 Notice by email to long-form claimants, is the best notice practicable under the circumstances and
25 complies with due process.

26 7. The District Court finds that the proposed Long-Form Plan of Allocation should be
27 approved as it is found to be fair, reasonable and adequate.

1 8. The \$2,300,000 Long-Form Fund, as defined in the Settlement Agreement, shall be
2 distributed to the Class members who submitted valid claim forms and in accordance with the
3 approved Long Form Plan Of Allocation.

4 9. The Claims Administrator, the parties, counsel herein in any capacity in which they
5 may act hereunder, and any employees or agents of such Settlement Agent, the parties, or counsel
6 (including without limitation such persons' employees who may furnish services in connection with
7 the Settlement) shall not be liable for anything done or omitted to be done in connection with the
8 Settlement and administration thereof except for their own willful misconduct.

9 10. That after the Claims Administrator has made reasonable and diligent efforts to
10 distribute the Long-Form Fund of the Net Settlement Fund to those Class members identified in the
11 Long Form plan of allocation, any balance remaining in the Net Settlement Fund from the Long-
12 Form Fund one (1) year after the initial distribution shall be contributed to non-sectarian, not-for-
13 profit 501(c)(3) organization(s) designated by and not affiliated with Co-Lead Counsel.

14 11. This Court retains continuing jurisdiction over any further application or matter
15 which may arise in connection with this action, including the resolution of Schubert's claim.

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17 **IT IS SO ORDERED.**

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19 DATED: 4/27/06

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THE HONORABLE JEREMY FOGEL
UNITED STATES DISTRICT JUDGE